

1986—Pub. L. 99-576 substituted “the Administrator” for “he” before “may request”.

#### EFFECTIVE DATE

Section effective Sept. 30, 1976, see section 405(a) of Pub. L. 94-432, set out as an Effective Date of 1976 Amendment note under section 1521 of this title.

### § 5107. Claimant responsibility; benefit of the doubt

(a) CLAIMANT RESPONSIBILITY.—Except as otherwise provided by law, a claimant has the responsibility to present and support a claim for benefits under laws administered by the Secretary.

(b) BENEFIT OF THE DOUBT.—The Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary. When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant.

(Added Pub. L. 100-687, div. A, title I, §103(a)(1), Nov. 18, 1988, 102 Stat. 4106, §3007; renumbered §5107 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 106-398, §1 [[div. A], title XVI, §1611(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-359; Pub. L. 106-419, title I, §104(c)(2), Nov. 1, 2000, 114 Stat. 1828; Pub. L. 106-475, §4, Nov. 9, 2000, 114 Stat. 2098.)

#### AMENDMENTS

2000—Pub. L. 106-475 substituted “Claimant responsibility; benefit of the doubt” for “Burden of proof; benefit of the doubt” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) Except when otherwise provided by the Secretary in accordance with the provisions of this title, a person who submits a claim for benefits under a law administered by the Secretary shall have the burden of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded. The Secretary shall assist such a claimant in developing the facts pertinent to the claim. Such assistance shall include requesting information as described in section 5106 of this title.

“(b) When, after consideration of all evidence and material of record in a case before the Department with respect to benefits under laws administered by the Secretary, there is an approximate balance of positive and negative evidence regarding the merits of an issue material to the determination of the matter, the benefit of the doubt in resolving each such issue shall be given to the claimant. Nothing in this subsection shall be construed as shifting from the claimant to the Secretary the burden specified in subsection (a) of this section.”

Pub. L. 106-398, §1 [[div. A], title XVI, §1611(a)], directed the general amendment of the section catchline and text. Pub. L. 106-419, §104(c)(2), provided that, as of the enactment of Pub. L. 106-419, the amendment made by Pub. L. 106-398, §1 [[div. A], title XVI, §1611(a)], was deemed for all purposes not to have taken effect and that Pub. L. 106-398, §1 [[div. A], title XVI, §1611(a)], ceased to be in effect.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3007 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration”.

Pub. L. 102-40, §402(d)(1), substituted “5106” for “3006”.

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” before “the burden”.

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration”.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-475, §7, Nov. 9, 2000, 114 Stat. 2099, provided that:

“(a) IN GENERAL.—Except as specifically provided otherwise, the provisions of section 5107 of title 38, United States Code, as amended by section 4 of this Act, apply to any claim—

“(1) filed on or after the date of the enactment of this Act [Nov. 9, 2000]; or

“(2) filed before the date of the enactment of this Act and not final as of that date.

“(b) RULE FOR CLAIMS THE DENIAL OF WHICH BECAME FINAL AFTER THE COURT OF APPEALS FOR VETERANS CLAIMS DECISION IN THE MORTON CASE.—(1) In the case of a claim for benefits denied or dismissed as described in paragraph (2), the Secretary of Veterans Affairs shall, upon the request of the claimant or on the Secretary’s own motion, order the claim readjudicated under chapter 51 of such title, as amended by this Act, as if the denial or dismissal had not been made.

“(2) A denial or dismissal described in this paragraph is a denial or dismissal of a claim for a benefit under the laws administered by the Secretary of Veterans Affairs that—

“(A) became final during the period beginning on July 14, 1999, and ending on the date of the enactment of this Act; and

“(B) was issued by the Secretary of Veterans Affairs or a court because the claim was not well grounded (as that term was used in section 5107(a) of title 38, United States Code, as in effect during that period).

“(3) A claim may not be readjudicated under this subsection unless a request for readjudication is filed by the claimant, or a motion is made by the Secretary, not later than 2 years after the date of the enactment of this Act.

“(4) In the absence of a timely request of a claimant under paragraph (3), nothing in this Act [see Short Title of 2000 Amendments note set out under section 101 of this title] shall be construed as establishing a duty on the part of the Secretary of Veterans Affairs to locate and readjudicate a claim described in this subsection.”

#### EFFECTIVE DATE

Section effective Sept. 1, 1989, see section 401(a) of Pub. L. 100-687, set out as a note under section 7251 of this title.

### § 5108. Supplemental claims

(a) IN GENERAL.—If new and relevant evidence is presented or secured with respect to a supplemental claim, the Secretary shall readjudicate the claim taking into consideration all of the evidence of record.

(b) DUTY TO ASSIST.—(1) If a claimant, in connection with a supplemental claim, reasonably identifies existing records, whether or not in the custody of a Federal department or agency, the Secretary shall assist the claimant in obtaining the records in accordance with section 5103A of this title.

(2) Assistance under paragraph (1) shall not be predicated upon a finding that new and relevant evidence has been presented or secured.

(Added Pub. L. 100-687, div. A, title I, §103(a)(1), Nov. 18, 1988, 102 Stat. 4107, §3008; renumbered

§ 5108, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 115-55, § 2(i)(1), Aug. 23, 2017, 131 Stat. 1109.)

#### APPLICABILITY OF AMENDMENT

*Amendment of section by section 2(i)(1) of Pub. L. 115-55 applicable to all claims for which the Secretary of Veterans Affairs provides notice of a decision under section 5104 of this title on or after the later of 540 days after Aug. 23, 2017, or 30 days after the date on which the Secretary submits to Congress a certification of certain capabilities of the Department of Veterans Affairs to carry out the new appeals system established by Pub. L. 115-55 and to address appeals of decisions on legacy claims, with provision for early applicability of the new appeals system to certain claims. See 2017 Amendment note below.*

#### AMENDMENTS

2017—Pub. L. 115-55 amended section generally. Prior to amendment, text read as follows: “If new and material evidence is presented or secured with respect to a claim which has been disallowed, the Secretary shall reopen the claim and review the former disposition of the claim.”

1991—Pub. L. 102-40 renumbered section 3008 of this title as this section.

Pub. L. 102-83 substituted “Secretary” for “Administrator”.

#### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-55 applicable to all claims for which the Secretary of Veterans Affairs provides notice of a decision under section 5104 of this title on or after the later of 540 days after Aug. 23, 2017, or 30 days after the date on which the Secretary submits to Congress a certification of certain capabilities of the Department of Veterans Affairs to carry out the new appeals system established by Pub. L. 115-55 and to address appeals of decisions on legacy claims, with provision for early applicability of the new appeals system to certain claims, set out as a note under section 101 of this title.

#### EFFECTIVE DATE

Section effective Sept. 1, 1989, see section 401(a) of Pub. L. 100-687, set out as a note under section 7251 of this title.

#### CONSTRUCTION OF 2017 AMENDMENT

Pub. L. 115-55, § 2(i)(2), Aug. 23, 2017, 131 Stat. 1109, provided that: “Section 5108 of such title [38 U.S.C. 5108], as amended by paragraph (1), shall not be construed to impose a higher evidentiary threshold than the new and material evidence standard that was in effect pursuant to such section on the day before the date of the enactment of this Act [Aug. 23, 2017].”

### § 5109. Independent medical opinions

(a) When, in the judgment of the Secretary, expert medical opinion, in addition to that available within the Department, is warranted by the medical complexity or controversy involved in a case being considered by the Department, the Secretary may secure an advisory medical opinion from one or more independent medical experts who are not employees of the Department.

(b) The Secretary shall make necessary arrangements with recognized medical schools, universities, or clinics to furnish such advisory

medical opinions. Any such arrangement shall provide that the actual selection of the expert or experts to give the advisory opinion in an individual case shall be made by an appropriate official of such institution.

(c) The Secretary shall furnish a claimant with notice that an advisory medical opinion has been requested under this section with respect to the claimant's case and shall furnish the claimant with a copy of such opinion when it is received by the Secretary.

(d)(1) The Board of Veterans' Appeals shall remand a claim to direct the agency of original jurisdiction to obtain an advisory medical opinion from an independent medical expert under this section if the Board finds that the Veterans Benefits Administration should have exercised its discretion to obtain such an opinion.

(2) The Board's remand instructions shall include the questions to be posed to the independent medical expert providing the advisory medical opinion.

(Added Pub. L. 100-687, div. A, title I, § 103(a)(1), Nov. 18, 1988, 102 Stat. 4107, § 3009; renumbered § 5109, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; amended Pub. L. 102-83, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 115-55, § 2(j), Aug. 23, 2017, 131 Stat. 1109.)

#### APPLICABILITY OF AMENDMENT

*Amendment of section by section 2(j) of Pub. L. 115-55 applicable to all claims for which the Secretary of Veterans Affairs provides notice of a decision under section 5104 of this title on or after the later of 540 days after Aug. 23, 2017, or 30 days after the date on which the Secretary submits to Congress a certification of certain capabilities of the Department of Veterans Affairs to carry out the new appeals system established by Pub. L. 115-55 and to address appeals of decisions on legacy claims, with provision for early applicability of the new appeals system to certain claims. See 2017 Amendment note below.*

#### AMENDMENTS

2017—Subsec. (d). Pub. L. 115-55 added subsec. (d).

1991—Pub. L. 102-40 renumbered section 3009 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

Pub. L. 102-83, § 4(a)(3), (4), substituted “Department” for “Veterans' Administration” wherever appearing.

Subsecs. (b), (c). Pub. L. 102-83, § 4(b)(1), (2)(E), substituted “Secretary” for “Administrator” wherever appearing.

#### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-55 applicable to all claims for which the Secretary of Veterans Affairs provides notice of a decision under section 5104 of this title on or after the later of 540 days after Aug. 23, 2017, or 30 days after the date on which the Secretary submits to Congress a certification of certain capabilities of the Department of Veterans Affairs to carry out the new appeals system established by Pub. L. 115-55 and to address appeals of decisions on legacy claims, with provision for early applicability of the new appeals system to certain claims, see section 2(x) of Pub. L. 115-55, set out as a note under section 101 of this title.

#### EFFECTIVE DATE

Section effective Sept. 1, 1989, see section 401(a) of Pub. L. 100-687, set out as a note under section 7251 of this title.